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Wal-Mart
Human Resources/Legal
777 Story Road
San Jose, Ca 95122

FILED
2010 FEB 19 A 9:15
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT

ADR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PEDRO G. BAGUNAS, JR. Plaintiff v WALMART STORES, INC.; and JOSHUA BRAVO, an individual Defendants	CASE NO.: C10-00706 HRL COMPLAINT (FAMILY AND MEDICAL LEAVE ACT, 29 U.S.C. sect 2615) Jury Trial Requested

Plaintiff alleges the following:

CAUSE OF ACTION

1.

Plaintiff brings this cause of action under the Family and Medical Leave Act (FMLA) of 1998, 29 U.S.C. section 2615(a)(1), alleging violation with the exercise of his right provided under the Family and Medical Leave Act by Defendants Walmart Stores, Inc. and Joshua Bravo.

JURISDICTION

2.

Jurisdiction over Plaintiff's claim is vested with this Court under 28 U.S.C. section 1331 and 29 U.S.C. section 2617(a)

VENUE

3.

Venue is proper for this Court because all the events giving rise to Plaintiff's complaint occurred in San Jose, California. See 28 U.S.C. sect 1391.

PARTIES

4.

A. Plaintiff has been a resident of City of Milpitas, Santa Clara County, State of California, since 1999. Plaintiff was an *'eligible employee'* within the meaning of 29 U.S.C. sect 2611(2). He has been employed by Wal-Mart (Defendant Wal-Mart) for at least 12 months preceding the events described in this Complaint, and has worked at least 1, 200 hours for Walmart during the 12 months prior to the events.

B. Dependant Wal-Mart is Corporation doing business in several Cities in California. Walmart was Plaintiff's *'employee', under 29 U.S.C. section 2611(4) because Defendant Walmart was a corporation employing more than 50 employees for each working day.*

C. Defendant Joshua Bravo is the manager of Wal-Mart store in San Jose, California. He was and 'employer' within the meaning of the FMLA because as part of the management, he acted in Wal-Mart's interest.

FACTUAL STATEMENT

A. Plaintiff was an employee of Wal-Mart from August 16, 2004 through June 28, 2008. He was employed as a in stock associate since his first day of employment. He has gone through several supervisors and managers without incident.

B. On or about July 2006, plaintiff provided notice to the company that he suffers from various chronic medical conditions and that he intends to use his right under the FMLA. He submitted FMLA certification to his supervisor that he is suffering from several chronic medical conditions, e.g., severe depression, vertigo, bronchitis, migraine headaches, gerd, etc.

C. On August 4, 2007, he called in sick for a condition related to his chronic medical condition. Upon returning to work on August 5, 2007, he informed his supervisor of his condition. Wal-Mart attendance policy only requires medical documentation if absence from work exceed two working days. Because his absence was only a day, he did not provide medical document, but informed his supervisor that his absence was out due to his vertigo.

D. On or about September 8, 2007 through September 25, 2007, plaintiff once again suffered from his chronic medical condition severe enough that he was unable to work for 17 days. He followed Wal-Mart attendance policy and submitted FMLA form signed by his treating physician.

E. On or about January 28, 2008 through January 30, 2008, plaintiff was again inflicted with chronic medical condition that he missed 3 days of work. Following Wal-Mart procedure, he informed his supervisor that he will out due to ongoing medical problem. He provided Wal-Mart with medical certification for this absence.

F. On June 22 2008, while at work, plaintiff asked permission from manager Joshua Bravo that he excused because he was depressed, nervous, anxious and very angry and could not continue to work. Mr. Bravo authorized plaintiff's absence that night. As required, he called Wal-Mart sick call number the next day, which was his second day of absence. During the call, he informed the company that he was still sick and not ready to work. He also called in sick on the third day, again informing then that he was still sick and unable to perform his duties.

G. On June 26, 2008, plaintiff reported to work and provided Manager Joshua Bravo with doctor certification of his absence. The doctor also ordered work restrictions and requested that plaintiff be allowed to work half day through the end of June 2008. Manager Joshua accepted the doctor certification. When Manager Joshua Bravo accepted psychiatrist certification without mentioning the requirement of completing Wal-Mart's FLMA form, plaintiff assumed that everything was OK considering that Manager Joshua Bravo personally knew that plaintiff was off work from severe bout of depression.

H. On or about June 28, 2008, halfway through his 4 hour shift, plaintiff was called to HR office and with Manager Bravo present, he was terminated due to excessive absences.

RELIEF FOR VIOLATION OF FMLA. 29 U.S.C. 2615

A. FMLA, 29U.S.C. 2615(a)(1), prohibits employer to interfere with the exercise of or attempt to exercise any enumerated rights provided by FMLA.

B. Under the FMLA. Plaintiff was entitled to medical leave of absence from 080804 through, 080804, 090107 through 091407, 011908 through 020108, and 062108 through my termination date.

C. Wal-Mart clearly interfered with Plaintiff's right under FMLA by terminating him on June 28, 2008 in retaliation for exercising his FMLA protected medical leave, in violation of 29 U.S.C. 2615 (a)(1). Defendant Joshua Bravo, as the manager, directly recommended Plaintiff's termination in retaliation for having exercised medical leave protected by FMLA. Accordingly, defendants Wal-Mart and Bravo are equally and severally liable for violation of FMLA, 29 U.S.C. 2615(a)(1)

D. Because of defendants' violation, Plaintiff has suffered monetary damages, and therefore seek recovery of all equitable relief provided for by 29 U.S.C. 2617.

JURY TRIAL REQUESTED

Plaintiff hereby demands a trial by jury as to all issues pursuant to Federal Rule of Civil Procedure 38(b)

DEMAND FOR RELIEF

Plaintiff prays for the following relief:

a. Find the defendant in violation of the statutory provisions of FMLA;

b. Order Walmart to reinstate Plaintiff and that he be compensated at the rate of pay prior to his termination;

c. Order Walmart to pay Plaintiff interest on his damages as provided for in 29 U.S.C. section 2617(a)(1)(A)(ii);

d. Order Walmart to make Plaintiff whole by compensating his for lost wages and benefits of employment as provided for in 29 U.S.C. section 2617(a)(I)(A)(i)(1);

e. Order Walmart to pay for liquidated damages as provided for in 29 U.S.C. section 2617(a)(I)(A)(iii);

f. Award Plaintiff his costs as provided for in 29 U.S.C. section 2617(a)(3);

g. Order Walmart to pay pre-judgment and post-judgment interest, as appropriate; and such other and additional relief as the Court finds just and proper.

/Pedro G. Bagunas, Jr

Date: 2/19/2010

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
60 South Market Street, Suite 420
San Jose, CA 95113
Tel: (408) 291-7730
Fax: (408) 291-7731

April 2, 2009

Pedro Bagunas, Jr.
120 Dixon Landing Road, Apt. 79
Milpitas, CA 95035

SUBJECT: Wal-Mart Stores, Inc.
FILE NO. 1536524

Dear Mr. Bagunas, Jr.:

This office recently initiated an investigation of the above referenced firm under the Family and Medical Leave Act (FMLA) based on information you provided alleging potential violation of your rights under the provisions of this Act. This investigation was assigned to Wage and Hour Investigator Jennifer Kihnley. Ms. Kihnley was unable to substantiate your allegation. We, therefore, are unable to take any further action on your behalf.

This determination in no way limits your right of private action under Section 107(a) of the FMLA. This right of private action allows you to seek all back wages, job restoration, damages, court costs, fees, liquidated damages, and attorney's fees that you believe are due in a court of competent jurisdiction. The Department of Labor does not encourage or discourage such suits. The decision is entirely up to you. However, keep in mind that such recovery of restitution under this law is subject to a statute of limitations. Generally, this means that any court action must be brought under this section not later than two (2) years after the date of the last event constituting the alleged violation, or three (3) years in the case of willful violations. For additional information on the Act, see the enclosed Compliance Guide, or visit our web-site at: www.dol.gov

Sincerely,

Susana Rincon
District Director

enc: FMLA Compliance Guide
cc: file